

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(Amendment)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.525~~[163.500]~~-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions, as applies to 735 KAR 1:010 and 1:020. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification" both hardcopy and electronic.

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH as complete.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(6) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) "ENT" or Otolaryngologist, for purposes of KAR 1:010 and 1:020, means a medical professional trained in the medical and surgical management of patients with diseases and disorders of the ear, nose and throat.

~~(10)~~~~(9)~~ "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

~~(11)~~~~(40)~~ "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

~~(12)~~~~(41)~~ "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing, as described at KRS 163.506.

~~(13)~~~~(42)~~ "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician

practices, as a specialist in:

1. Family practice;
2. General practice;
3. Otolaryngology; or
4. Internal Medicine.

(14) "Physician Assistant Certified" (PAC) means a person licensed under KRS 311.840 to 311.862.

(15)[(43)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(16)[(44)] "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a) as:

- (a) Telecommunication devices for the deaf;
- (b) Amplified telephones~~[Amplifiers]~~;
- (c) Voice carry over telephones;
- (d) Captioned telephones;
- (e) Visual, audible, or tactile ring signal devices; and
- (f) Appropriate wireless devices.

(17) "Speech-impaired" means a person with a communication disorder such as stuttering, impaired articulation, impaired language, or impaired voice that adversely affects the use of telecommunications access lines.

(18)[(45)] "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(19)[(46)] "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic airwaves or hard-wired methods.

(20)[(47)] "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following. The person:

1. Is in possession of a valid driver's license or photo ID issued by the state of Kentucky;
2. Is currently registered to vote in Kentucky;
3. Owns an automobile registered in Kentucky;
4. Filed a Kentucky income tax return for the calendar year preceding the date of application;
5. Is stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or is a dependent of the Armed Forces member;~~[or]~~
6. Is currently enrolled as a student at an institution of higher learning located in Kentucky and meets the residency requirements of 13 KAR 2:045; or

7. If none of the above is attainable, the person shall provide alternate verification of residency such as a utility bill, lease agreement, bank statement, or documentation from another state or federal agency, as approved by the KCDHH Executive Director.

(b) At least five (5) years of age; and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and
2. Assume full responsibility for the equipment;~~[-and]~~

(c) Deaf, hard of hearing, or speech impaired such that the applicant cannot use a telecommunications access line independently~~[the telephone]~~ for communication without adaptive specialized telecommunications equipment.

(2) In addition to requirements listed in subsection (1) of this section, an applicant for a wireless STE shall be at least thirteen (13) years of age.

(3) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form, either hardcopy or electronic;

(b) Signed (electronic signature is acceptable on the electronic form) and submitted in person, by facsimile, or by mail (electronic if applicable); and

(c) Accompanied by:

1. A copy (either hardcopy or electronic) of a telephone or internet bill showing telephone number and name and address of the person being billed for residential telephone service[customers], unless the applicant is applying under the conditions of Section 2(6);

2. A copy (either hardcopy or electronic) of the applicant's proof of residence; and

3. Document of certification, as required by subsection (5) of this section.

(4) An applicant shall provide additional supporting documentation to verify information provided on the application, if requested by KCDHH.

(5) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by (one of the following):

1. A licensed physician licensed PAC or licensed APRN;

2. A licensed audiologist;

3. A licensed speech-language pathologist, which verifies that the applicant has the ability to access telecommunications independently;

4. A licensed hearing instrument specialist; or

5. With prior approval by KCDHH, a licensed or certified individual that works for a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals.

(6) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services, or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telecommunications[telephone] service, including:

(a) Installation of a telecommunications[telephone] line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telecommunications[telephone] bills.

(7) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(8) KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and

(b) 735 KAR 1:020.

(9) Not more than two (2) STEs, one (1) of which shall be a visual, auditory, or tactile signaler package, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line.

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dat-

ed, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-served roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly~~[select and]~~ use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives STE as part of an individual plan of employment, also known as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program; or

(5) The applicant has the STE stolen, without a police report, or has lost or sold the STE. ~~[-; or~~

~~(6) If replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.]~~

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility when the reapplication is processed. (1) A recipient may apply to replace the original STE if:

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall ~~[first]~~ send the damaged equipment ~~[to the KCDHH, or]~~ directly to the vendor as directed by Telecommunications Access Program staff. ~~[(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of irreparable damage.]~~

~~(a) [(b)]~~ If the vendor certifies ~~[to the KCDHH]~~ that the equipment provided to the recipient is irreparable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation;

3. The first-come, first-served provision; and
4. Availability of funds.

(5) If the recipient obtains certification from an approved physician, PAC, audiologist, hearing instrument specialist, APRN, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on eligibility criteria, first-come, first-served basis and availability of funds. ~~[As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.~~

~~(6) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.~~

~~(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.~~

~~(b) If the original STE is:~~

~~1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or~~

~~2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.]~~

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, or sold or gave away the STE, and the violation is documented, the ~~[KCDHH shall demand return of the equipment immediately. Upon demand, the]~~ recipient shall ~~[return the STE and shall]~~ be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", July 2018~~[November 2014]~~, is incorporated by reference and mirrors the electronic application.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, or 502-416-0607 VP, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 1:00 p.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, five work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until

May 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions and the criteria for awarding specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech-impaired individuals, and includes application and certification procedures for providing access to telecommunications through the Telecommunications Access Program within the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the KCDHH establish a program to distribute STE to any deaf, hard of hearing or speech-impaired person qualified to receive the equipment. This regulation also provides a mechanism for providing access to telecommunications to meet the mandates of the ADA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by defining terms used in KAR 1:010 and 1:020 and establishing procedures for the distribution of STE to any deaf, hard of hearing or speech-impaired person qualified to receive the equipment, so they have access to equitable communication.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for awarding STE to deaf, hard of hearing or speech-impaired constituents in Kentucky and includes the application and certification procedures, as well as penalty for fraud.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions used in the program and updates procedures for accepting an application for STE to include an electronic format to meet today's technological advances. It also adds selling, giving or trading STE to fraud criteria, adds physician assistant certified (PAC) to authorized certification and removes the criteria for determining if a piece of STE is non-functional. With today's advancing technology, STE typically does not last more than four years and the cost of obtaining the equipment from the recipient and evaluating it for functionality is cost prohibitive with the state's budget limitations. The hardcopy application continues to be used in the program as needed, and the electronic application format shall match the hardcopy version incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment adds definitions utilized in the program, and updates procedures for accepting an application for STE to include an electronic format to meet today's technological advances. It also adds selling, giving or trading STE to fraud criteria, adds physician assistant certified (PAC) to authorized certification and removes the criteria for determining if a piece of STE is non-functional. With today's advancing technology, STE typically does not last more than four years and the cost of obtaining the equipment from the recipient and evaluating it for functionality is cost prohibitive with the state's budget limitations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects updated definitions and procedures for application and distribution of STE as operated by

KCDHH, per KRS 163.525.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows applicants to utilize an electronic format for application if desired, which conforms to other state distribution programs, adds PAC as an authorized professional, defines other terminology used in the program, and implements stricter fraud procedures to ensure the STE is being utilized for the intended purpose rather than personal gain. The removal of diagnostic procedures for non-functional STE over four (4) years old will save staff time, resources and postage in today's climate of budgetary constraints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth will be impacted by this regulation if they choose to apply for STE. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing or speech-impaired individuals throughout the Commonwealth may be impacted if they choose to assist a consumer with an application.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any action to comply with this regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Agencies or consumers participating in the Telecommunications Access Program will not incur any costs due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both consumers and entities identified will benefit from this amendment, as application for STE may be made online and procedures are clarified. Consumers whose primary physician is a PAC will benefit, as they will not have to obtain alternate professional certification. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when current STE's are not typically functional for more than four years and terminology used in the program is clarified.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial loading of an online STE application is part of KCDHH staff duties and is included in the agency's budget calculations. Therefore, there is no change in cost initially to the administrative body after implementation of this amendment.

(b) On a continuing basis: There is no change in cost ongoing to the administrative body after implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds collected per KRS 278.5499 to support the TAP will support the implementation of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding is required to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased because of this amendment.

(9) TIERING: Is tiering applied? Tiering of TAP applicants is applied in times of 'fiscal constraints', which is defined as 75% (seventy-five percent) of program funds being disbursed or encumbered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? State agencies or other entities supporting deaf, hard of hearing or speech-impaired individuals will benefit from this amendment, as their consumers will now be able to make an online application for STE or utilize a PAC as an authorized professional. Applicants for STE throughout the Commonwealth will benefit from this amendment as they may now file an application online or utilize a PAC as an authorized professional. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when STE's are not typically functional for more than four years and terminology utilized in the program is clarified in definitions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 61.878, 163.525, 163.527, 334.010(9), 334.020. Federal statutory authority; 29 U.S.C. Sec 794 of the Rehabilitation Act of 1973 and 42 U.S.C. Sec 12101 of the American's with Disabilities Act.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no impact on the expenditures and revenues of state government agencies who refer consumers to the TAP for STE because of this amendment. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when STE's are not typically functional for more than four years and terminology utilized in the program is clarified in definitions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated during the first year because of this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years because of this amendment.

(c) How much will it cost to administer this program for the first year? The cost for administration of the TAP will not increase during the first year because of this amendment, as it is funded as mandated in KRS 278.5499.

(d) How much will it cost to administer this program for subsequent years? The cost for administration of the TAP will not increase during subsequent years because of this amendment, as it is funded as mandated in KRS 278.5499.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This regulation amendment will have no impact on program revenues generated in compliance with KRS 278.5499.

Expenditures (+/-): This regulation amendment will have no impact on program expenditures, other than normal staff time to implement an online application.

Other Explanation: None